

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: October 9, 1991

FAA Order No. 91-51

In the Matter of:

TROY R. HAGWOOD

Docket No. CP91EA0105

DECISION AND ORDER

Complainant has appealed from the Order Dismissing Complaint^{1/} served on March 28, 1991, by Chief Administrative Law Judge John J. Mathias. For the reasons discussed below, Complainant's appeal is granted, and the law judge's order is reversed.

The procedural history of this case is as follows. On September 24, 1990, Complainant issued a Final Notice of Civil Penalty (FNCP) to Respondent. According to the Rules of Practice, Respondent could respond to the FNCP by either submitting the amount of the proposed civil penalty, or by filing a written request for a formal hearing with the Hearing Docket in Washington, DC. See 14 C.F.R. § 13.16. These options are listed on the response attachment form, which was enclosed with the FNCP. On or about October 1, 1990,

^{1/} A copy of the law judge's Order is attached to this decision.

Respondent returned the response attachment form to the FAA's office of the Assistant Chief Counsel for the Eastern Region in Jamaica, New York, after checking the second choice:

- (_) I will request a formal hearing in accordance with Section 31.16 [sic] of the Federal Aviation Regulations by filing a written request for a hearing with the hearing docket clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, D.C. 20591, Attention: Hearing Docket Clerk).

However, Respondent did not file a written request for a hearing with the Hearing Docket.

In a letter dated October 23, 1990, to the agency attorney assigned to this case, Respondent explained that he had signed a "hearing docket form" indicating that he would like to have a hearing, but that he had "heard nothing" in response. He wrote that he wanted to clear the matter up as soon as possible. On November 30, 1990, the agency attorney wrote to Respondent that his request for a formal hearing "was to be filed with the Hearing Docket in Washington, D.C.," not with the Assistant Chief Counsel's office, and that the Hearing Docket Clerk would contact the Assistant Chief Counsel's office when Respondent's request was received. Despite this advice, Respondent never filed a written request for hearing with the Hearing Docket.

During January, 1991, the Hearing Docket staff in Washington, DC, contacted the Assistant Chief Counsel's office and asked for a copy of Respondent's request for hearing.

After being informed that the Assistant Chief Counsel's office had received no such request, the Hearing Docket staff requested copies of all correspondence received by the Assistant Chief Counsel's office from Respondent relating to a formal hearing. Accordingly, on January 24, 1991, the agency attorney submitted to the Hearing Docket copies of Respondent's response attachment and his October 23, 1990, letter. In addition, the agency attorney filed a complaint and a cover letter identifying Respondent's October 23 letter as a request for hearing. On March 19, 1991, this case was assigned to Chief Administrative Law Judge John J. Mathias.

On March 28, 1991 the law judge issued, sua sponte, an Order Dismissing Complaint, in which he cited 14 C.F.R. § 13.208(a)^{2/} (requiring the agency attorney to file a complaint with the Hearing Docket within 20 days of receipt of a request for hearing) and stated that Complainant filed the complaint in this case "almost three months after the request for hearing had been received at the Office of [Assistant Chief] Counsel." The law judge stated that "[n]o reason was given for the failure to comply with the Rule," and dismissed the complaint.

^{2/} Section 13.208(a) provides, in pertinent part:

(a) Filing. The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk . . . not later than 20 days after receipt by the agency attorney of a request for hearing.

On appeal, Complainant argues that, because Respondent never filed a proper request for hearing in accordance with 14 C.F.R. § 13.16(f),^{3/} the time for filing a complaint never began running. Furthermore, Complainant argues that the document filed by the agency attorney on January 24, 1991, should not have been construed as a "complaint" within the meaning of the Rules of Practice, and the law judge erred in dismissing it as untimely filed. This argument is asserted even though it was stated in the transmittal letter to the Hearing Docket, "Enclosed herein please find a copy of a request for hearing, one original and one copy of FAA's Complaint in the above-entitled action for filing together with proof of service upon the Respondent."

Although it appears that Respondent wanted a formal hearing on the charges contained in the FNCP, it is clear he failed to properly request one. That being the case, Complainant could have issued an order assessing civil penalty pursuant to 14 C.F.R. § 13.16(b)(2). Instead, however, it appears that the agency attorney decided to waive Respondent's mistake by filing a document which was unequivocally labeled as a complaint.

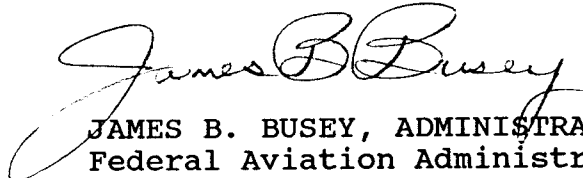
^{3/}Section 13.16(f) provides, in pertinent part:

(f) Request for a hearing. . . . A person requesting a hearing shall file a written request for a hearing with the hearing docket clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk) and shall mail a copy of the request to the agency attorney.

Accordingly, I am hard pressed to find fault with the fact that the law judge regarded this document as a complaint.

The question of whether the complaint was timely filed, however, is a different question. Since it is indisputable that Respondent never filed a request for a hearing with the Hearing Docket, I can accept Complainant's argument that the period of limitations for filing a complaint was never triggered. In my view, Complainant could waive Respondent's failure to file a proper request for a hearing, but by doing so, Complainant did not also waive its right to file a complaint. Since the waiver and the complaint were filed together in this case, there should be no question as to timeliness. In this case, the time within which to file a complaint should logically be counted from the time of the waiver.

THEREFORE, for the reasons stated above, the law judge's Order Dismissing Complaint is reversed and this case is remanded to the law judge for a hearing on the merits of the complaint. Respondent shall have 30 days from the date of service of this decision to file his answer to the complaint pursuant to 14 C.F.R. § 13.209.


JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration

Issued this *9th* day of *October* 1991.